The Kendrick Group, LLC.
"Integrating Technology and Education"
http://educationrate.com

August 3, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 02-6

Request for waiver of "47 C.F.R. § 54.720, Filing Deadlines" and review of Universal Service Administrative Company's Administrator's Decision dated March 31, 2011, Adjusting Funding Commitment Decisions for, Application 469901, FRN 1338653

Dear Secretary Dortch:

Bellflower Unified School District appeals the Notification of Commitment Adjustment Letter received from the Universal Services Administration.
Attached is the appeal.

Gary Kendrick

The Kendrick Group, LLC.
1429 Stoneykirk Rd
Pelham, AL 35124-6218

USAC CRN No. 16043626

Phone: (800) 970-3270 ext. 101
Fax : (800) 613-6638
Email: kendrick@educationrate.com

Attachments

The Kendrick Group, LLC.
"Integrating Technology and Education"
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August 3, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

Appellant name: Bellflower Unified School District
Applicant Name: Bellflower Unified School District
BEN: 143522
Funding Year 2005
471 #: 469901
FRN: 1338653

Bellflower Unified School District requests a waiver of the 60 day rule for appealing Administrators decisions due to extenuating circumstances. Bellflower retains the services of a consultant and relies on those services to manage the filings and correspondence with USAC, and the FCC.

The consultant uses an automated filing system. When paper documents arrive they are immediately scanned into the system which files the letters based on the FRN and type of letter, such 471 RAL or COMAD.

In this case FRN 1338653 had a COMAD letter arrive first that notified Bellflower that Verizon overbilled USAC. The COMAD was directed to Verizon to repay the funds, not Bellflower USD.

A second letter arrived later and the consultant's scanning system picked up the FRN and filed the COMAD for Bellflower USD into the Verizon folder. Doing this would not place this scanned document into the queue and alert staff. The system is FRN based and in the case of non-form correspondence the first letter adds the vendor or district. In this case the FRN 1338653 and Verizon were entered with the first COMAD directed towards Verizon. All following non-form correspondence regarding FRN 1338653 went to Verizon's folder for FY 2005. This included the COMAD directed to Bellflower USD dated March 31, 2011. This was missed due to the system reading the FRN 1338653 and saving it with the others under Verizon, not Bellflower USD.

This COMAD directed to Bellflower USD went unnoticed due to the consultant's system not taking into account that two COMADs could be issued for the same FRN, one to the vendor and a second one to the beneficiary. This had never happened before in the data model used to write the software and this serious flaw in the programing was not discovered until July 26, 2011. The Los Angeles County Office of Education (LACOE) notified Bellflower of the Red Light letter on this date. The consultant is the listed contact on the forms filed with USAC. The consultant still has not officially received the Red Light letter as of today's date. LACOE sent a copy of the letter to Bellflower whom forwarded to the consultant. The consultant could not tie the letter to Bellflower so they contacted Client Services, opening Case No. 22-253532 on July 26, 2011. On August 2, 2011, Client Services responded with an answer that two COMAD letters were sent out. At that point the consultant pulled all the paper copies for the funding year and went through all them discovering the error which all paper work for FRN 1338653 was under Verizon and not Bellflower.

That brings Bellflower to request a waiver of the 60 day rule in filing an appeal and respectfully requests that the FCC approve this waiver and then considers the appeal for the FRN 1338653 which follows. We filed this appeal as soon as the ministerial error was found out. The children of Bellflower USD should not have to suffer for this error

APPEAL

Bellflower Unified School District appeals the conclusion and decision by the Schools and Libraries Division, Universal Services Administrative Company, in its letter dated November 15, 2010.

USAC claims that Bellflower Unified School District failed to:

".....to comply with the FCCs competitive bidding requirements. The Applicant failed to comply with State of California bid requirements that a notice calling for bids be published at least once a week for two weeks in a newspaper. In addition, the Applicant failed to comply with Board of Education policies which require purchasing duties be centralized in a Purchasing Department. According to the FCCs competitive bidding requirements, Applicants are required to follow state and local procurement requirements. Since the Applicant failed to comply with the competitive bidding requirements, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant."

USAC is stating that Bellflower Unified School District (BUSD) failed to follow the California Public Contract Code (CPC), we would agree if this wasn't for a tariffed product governed by the California Public Utility Commission thus making the data lines a utility. The Public Contract Code Section 2011 does not directly call for seeking bids on utilities. Utility prices are under the control of the CPUC. Simply put the burden on going out to bid for natural gas, water, electricity, and telecom is what "Hodgeman v. City of San Diego" speaks of when it says, *'It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage ... or it is practically impossible to*

obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.'

Being as such, going out to formal bid for this telecom service would simply produce the same results. Verizon owned the data lines.

In the California Appellate court case of "Hodgeman v. City of San Diego" the District is allowed not to go out to bid for the data lines. The District would not have to go out to bid since the results would not have changed. Other bidders would have had to use Verizon's data lines. Verizon would be the reseller adding another layer costs and technical issues which could delay repairs.

In the case of "Hodgeman v. City of San Diego, 53 Cal.App.2d 610" the California Court of Appeals, Fourth District states in their ruling that "In Los Angeles Dredging Co. v. Long Beach, 210 Cal. 348 [291 P. 839, 71 A.L.R. 161]", the Supreme Court said:

"The charter of the City of Long Beach lays down the general requirement that all contracts, except as otherwise provided in the charter or by general law, must be made by the city manager with the lowest responsible bidder. In the instant case, the contracts were made without the letting of bids. This fact renders them void unless they come within some exception to the rule set forth above. There are two well-recognized exceptions which are, we think, applicable to this situation."

"The first exception is founded on the fact that sometimes it is undesirable or impossible to advertise for bids for particular work. In such cases the statutory requirement is deemed not to apply. In 2 Dillon on Municipal Corporations, 1199, section 802, the law is thus stated: 'It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage ... or it is practically impossible to obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.' Our courts have approved this doctrine. (Los Angeles Gas & E. Corp. v. Los Angeles, 188 Cal. 307 [205 P. 125]; Miller v. Boyle, 43 Cal.App. 39 [184 P. 421].)"

USAC has found that Bellflower violated California State laws while not fully understanding all the laws. Laws are modified by court cases daily.

We find that under "Hodgeman v. City of San Diego" Bellflower USD clearly meets the exception rule to override state and local rules regarding bidding. The formal bidding process would not produce an advantage or change the outcome since Verizon owned the data lines and other companies would have had to go through Verizon as the reseller.

The District complied with the federal 28 day requirement under the Schools and Libraries Division program. In short, all state and local rules were complied with as well as federal rules.

There is no violation and therefore USAC's decisions should be overturned and no commitment adjustment should be made. The FRN 1338653 should be left standing as disbursed. For the

District to be required to refund the disbursed amount of $87, 105.41 would be a severe financial burden on the District under California's current economic difficulties and severe budgets cuts.

Attached is a copy of "Hodgeman v. City of San Diego."

Bellflower Unified School District respectfully requests that the Federal Communications Commission rule in Bellflower's favor based on the facts presented. The legal precedent, "Hodgeman v. City of San Diego", clearly shows Bellower met the exceptions stated in the ruling for bidding.

Respectfully,

Gary Kendrick

The Kendrick Group, LLC.
1429 Stoneykirk Rd
Pelham, AL 35124-6218

USAC CRN No. 16043626

Phone: (800) 970-3270 ext. 101
Fax : (800) 613-6638
Email : kendrick@educationrate.com

Attachments

Gary Kendrick
BELLFLOWER UNIF SCH DISTRICT
PO Box 1329
Pelham, AL 35124 5329

First COMAD for Verizon that started the problem with the FRN in the scanner filing system.

USAC
Universal Service Administrative Company

Schools and Libraries Division

Demand Payment Letter

Funding Year 2005: July 1, 2005 - June 30, 2006

February 22, 2011

Francie Rollins

Verizon California Inc.

1717 Arch Street, 4th Floor Attn Debbie A Kappler

Philadelphia, PA 19103

Re:		
	SPIN:	**143004769**
	Service Provider Name:	**Verizon California Inc.**
	Form 471 Application Number:	**469901**
	Funding Year:	**2005**
	FCC Registration Number:	**0001536424**
	Applicant Name:	**BELLFLOWER UNIF SCH DISTRICT**
	Billed Entity Number:	**143522**
	Applicant Contact Person:	**GARY KENDRICK**
	Payment Due By:	**3/24/2011**

You were recently sent a Notification of Improperly Disbursed Funds Recovery Letter informing you of the need to recover funds from you for the Funding Request Number(s) (FRNs) listed on the Funding Disbursement Recovery Report of that letter. A copy of that Report is also attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If the USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Disbursed Funds Recovery Explanation on the Funding Disbursement Recovery Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment.

Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Service Provider" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Bank of America
c/o Universal Service Administrative Company (105056)
1075 Loop Road
Atlanta, GA 30337
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
P.O. Box 105056
Atlanta, GA 30348-5056
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete Program information is posted to the SLD section of the USAC website at www.usac.org/sl/. You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: *GARY KENDRICK*
BELLFLOWER UNIF SCH DISTRICT

Funding Disbursement Recovery Report
Form 471 Application Number: 469901

Funding Request Number:	1338653
Contract Number:	2005-310633
Services Ordered:	TELCOMM SERVICES
Billing Account Number:	
Funding Commitment:	$0.00
Funds Disbursed to Date:	$172,833.44
Funds to be Recovered from Service Provider:	$85,728.03

RIDF

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that funds were disbursed for products and/or services that were not approved on the Form 471 and the products and/or services do not meet the requirements for an eligible service substitution. During the audit it was determined that the Service Provider received disbursement for services that were not included in the Form 471 # 469901, Item 21 Attachment for FRN 1338653. The Service Provider agreement is for TLS Basic Access Lines, but the Service Provider bills contained other types of services in addition to TLS service. FCC rules require that applicants indicate on the Form 471 and item 21 attachments the services and/or equipment for which they are seeking funding so that USAC can determine whether the services and/or equipment are eligible for funding. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it provides and invoices USAC for only the products and/or services equipment that USAC approved. On the SPAC Form at Block 2 Item 10, the authorized person certifies on behalf of the service provider that the Service Provider Invoice Forms that are submitted by the service provider contain requests for universal service support for services which have been billed to the service provider''s customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator. Accordingly, USAC will seek recovery of the $85,728.03 of improperly disbursed funds from the service provider.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING

GARY KENDRICK
BELLFLOWER UNIF SCH DISTRICT
P O BOX 1329
Pelham, AL 35124 5329

The second COMAD for Bellflower that was misfiled in the scanner filing system due to the first FRN being for Verizon. This one was filed in Verizon's folder

USAC
Universal Service Administrative Company

SCHOOLS AND LIBRARIES DIVISION
CAL / DPL / RIDF
Second Delivery Attempt

Date: **March 31, 2011**

Applicant's Name	**BELLFLOWER UNIF SCH DISTRICT**
Contact Person	**GARY KENDRICK**
Address	**PO Box 1329**
City, State Zip	**PELHAM, AL 35124 5329**
FCC Form 471 Application	**469901**

Important Notice

Enclosed you will find your ***Notification of Commitment Adjustment Letter (CAL).*** The letter was deemed 'un-deliverable' by the U.S. Postal Service and returned to the Schools and Libraries Division's (SLD) Client Operations Department. It is important to note that the date of the original ***CAL*** has been modified by SLD to accommodate the delivery delay. A new 'Letter Date' has been added to the letter which is enclosed in this mailing.

This advisory is especially important if you are considering filing an appeal. Appeals must be filed within 60 days of the date on the ***Notification of Commitment Adjustment Letter (CAL).*** Please note the new 'Letter Date'. For further information on filing appeals, see the "Appeals Procedure" in the SLD Reference Area of USAC's web site <www.sl.universalservice.org> for more information on appeal deadlines and how to file your appeal.

Sincerely,

Schools and Libraries Division
Toll-Free: **(888) 203-8100**
Fax Toll-Free: **(888) 276-8736**

USAC
Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2005: July 1, 2005 - June 30, 2006

March 31, 2011

GARY KENDRICK
BELLFLOWER UNIF SCH DISTRICT
P O BOX 786
APPLE VALLEY, CA 92307 0014

Re: Form 471 Application Number:	**469901**
Funding Year:	**2005**
Applicant's Form Identifier:	**BUSD05TC2**
Billed Entity Number:	**143522**
FCC Registration Number:	**0013163878**
SPIN:	**143004769**
Service Provider Name:	**Verizon California Inc.**
Service Provider Contact Person:	**Francie Rollins**

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
•Billed Entity Name,
•Form 471 Application Number,
•Billed Entity Number, and
•FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Francie Rollins
Verizon California Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 469901

Funding Request Number:	1338653
Services Ordered:	TELCOMM SERVICES
SPIN:	143004769
Service Provider Name:	Verizon California Inc.
Contract Number:	2005-310633
Billing Account Number:	
Site Identifier:	143522
Original Funding Commitment:	$172,833.44
Commitment Adjustment Amount:	$172,833.44
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$87,105.41
Funds to be Recovered from Applicant:	$87,105.41

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of the audit it was determined that the applicant failed to comply with the FCCs competitive bidding requirements. The Applicant failed to comply with State of California bid requirements that a notice calling for bids be published at least once a week for two weeks in a newspaper. In addition, the Applicant failed to comply with Board of Education policies which require purchasing duties be centralized in a Purchasing Department. According to the FCCs competitive bidding requirements, Applicants are required to follow state and local procurement requirements. Since the Applicant failed to comply with the competitive bidding requirements, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Hodgeman v. City of San Diego, 53 Cal.App.2d 610

[Civ. No. 2858. Fourth Dist. July 27, 1942.]

A. E. HODGEMAN, Appellant, v. THE CITY OF SAN DIEGO (a Municipal Corporation) et al., Respondents.

COUNSEL

Charles B. Provence and William J. Adams for Appellant.

Jacob Weinberger, City Attorney, Morey S. Levenson and William H. Macomber, Deputies City Attorney, for Respondents.

OPINION

MARKS, J.

This is an appeal from a judgment refusing to enjoin the execution of contracts between the City of San Diego and the Duncan Meter Corporation and the Karpark Corporation for the installation of parking meters in the city **[53 Cal.App.2d 612]** of San Diego, or, if the contracts had been executed, to enjoin their performance.

The Duncan Meter Corporation is the manufacturer of the Miller Multiple Coin parking meter which is manually operated. The Karpark Corporation is the manufacturer of the Karpark parking meter which is a multiple coin automatic meter. Both companies also manufacture single coin meters. The individual defendants are officers of the city of San Diego.

Plaintiff is a resident and taxpayer of the city of San Diego and the local agent of the Dual Parking Meter Company, the manufacturer of the Dual parking meter which is a multiple coin automatic meter. It also makes a single coin meter.

In 1940, the Board of Harbor Commissioners of San Diego had eighty parking meters of different makes installed along the harbor front. In 1941, the city council decided to install parking meters on some of the downtown streets.

Section 94 of the city charter provides in part as follows:

"Contracts. In the construction, reconstruction, or repair of public buildings, streets, utilities and other public works, and in furnishing any supplies, materials, equipment or contractual services for the same, or for other use by the City, when the expenditure therefor shall exceed the sum of one thousand dollars, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council on the recommendation of the Manager or the head of the Department in charge, if not under the Manager's Jurisdiction, shall let the same to the lowest

responsible and reliable bidder, not less than ten days after advertising for six consecutive days in a newspaper of a general circulation in the City for sealed proposals for the work contemplated. ... All contracts entered into in violation of this Section shall be void and shall not be enforceable against said City; ..."

Specifications for bidders were prepared and a notice of the time and place of receiving bids was published. The specifications were most general in form and designedly so to permit all manufacturers of various types of parking meters to submit bids. The original specifications described only single coin meters. An addendum was prepared calling for bids on multiple coin meters, that is, those operated by both pennies and nickels. This addendum was submitted to all bidders.

Bids were requested on not less than one thousand meters and were to be on the basis of what was in effect an option to purchase rather than an immediate purchase. The meters **[53 Cal.App.2d 613]** were to be installed and operated over a period of six months with the right in the city to cancel the contract and require the removal of all meters within a specified time thereafter. The meters were to be paid for out of the revenue derived from their operation rather than from the general revenues of the city. Multiple coin meters were finally selected and installed so we need give no further attention to bids submitted for single coin meters.

Each bidder submitted a sample parking meter which, while not installed on the street, was inspected and operated by city officers. The operation of two makes was found to be unsatisfactory and they were not considered. One of these meters was supposed to be an infringement on the patent of another manufacturer. No point is made of the rejection of the bids to furnish the two unsatisfactory meters.

A committee was selected to investigate and report on the operation of the meters. A majority of this committee recommended the installation of the Dual Automatic Parking Meter. The city manager also recommended the installation of that meter.

The members of the city council made further investigation themselves both by inspection and operation of the meters and by consulting others whom they believed qualified to advise them on the problem of the best and most durable meter.

One councilman testified that a man in whom he had confidence as an expert on the mechanism of clocks (all the parking meters were operated with such a mechanical device) after investigation advised him as follows: "And he particularly called my attention to the fact that the Dual, the gears in the Dual clock works were simply stamped out of think brass, and he said he felt the Dual meter--I believe I am reporting his statement to me correctly--he said that the Dual meter, in his opinion, was a beautiful looking meter and was designed to sell, rather than wear."

The members of the city council were divided on the question of installing manual or automatic meters. After considerable discussion and investigation in which the city manager took part it was decided to divide the contract equally between the manual and the automatic meters. All the councilmen but one voted in favor of this decision. The city manager made no objection to it and concurred in the final awards made. **[53 Cal.App.2d 614]**

This decision left the Duncan Meter Corporation, manufacturer of the Miller Multiple Coin parking meter, as the sole bidder offering a manually operated meter after the elimination of the two unsatisfactory meters. It left the meter of the Dual Parking Meter Corporation, represented by plaintiff, and the product of the Karpark Corporation as contestants for the award of the contract for automatic meters.

Contracts were entered into for 500 Miller Multiple Coin parking meters at $61 each, plus 25 free meters with an installation charge on the free meters of $2.50 each; and 500 Karpark meters at $54, plus 25 free meters with an installation charge on the free meters of $2.00 each. Each contract provided for free servicing of the meters for six months and for furnishing supplies and other services without charge.

The Dual Parking Meter Company offered to supply 1,000 parking meters at $53.50 each, with no free meters, but with a servicing charge of $3.00 per year per meter.

Plaintiff maintains that the bid of the Dual Parking Meter Company was the lowest and that it was the "lowest responsible and reliable bidder"; that under the provisions of the charter the Council of San Diego was required to award the contract to it; that the awards to the other corporations were illegal and void acts.

[1] If we regard the price bid as the only measure of which company was "the lowest responsible and reliable bidder" this argument lacks convincing force. The price of $54 per meter which the Karpark Corporation was to receive included six months free servicing of the meters. The bid of the Dual Meter Corporation was $53.50 for each meter with a $3.00 charge for servicing for one year. If the charge for servicing each meter for six months would be one-half of that sum, it would make the comparable price of the Dual Parking Meter $55 each or $1.00 higher than the Karpark. Another element enters into the contract price of that meter. There were 25 free meters to be installed at $2.00 each. The average price of the 525 Karpark meters would be about $51.52 each with six months free servicing which is substantially less than the price bid for the Dual meter.

It is true that the cost of the Dual Parking meter was considerably less than that of the Miller meter. The two meters are not comparable as they operate on different principles, the one being automatic and the other being manually operated. The evidence failed to give the trial judge, and fails to **[53 Cal.App.2d 615]** give us, any basis on which to compare the values of these two varieties of meters other than that both seemed to operate satisfactorily in the tests made.

The trial court found, and we think correctly so, that the parts to be furnished and the services to be rendered by the successful bidders, and by the Dual Parking Meter Company, varied so much that there was no sufficient basis furnished upon which to compare the bids.

If price alone, together with the value of the free parts and service, determined which company was "the lowest responsible and reliable bidder" we would have no trouble in concluding that plaintiff had failed to maintain the burden of proving that the bid of the Dual Parking Meter Company was the lowest. It was higher than the bid of the Karpark Corporation. The proper

construction to be given to the phrase in question was thus set forth in West v. Oakland, 30 Cal.App. 556 [159 P. 202]:

"It is the contention of the appellant that these two sections of the city charter of Oakland are to be read and construed together, and that when so construed the term 'lowest responsible bidder' as used in the body of section 130 thereof, and which has reference specially to the construction and equipment of public buildings, is to be held to mean only that the lowest responsible bidder shall be the lowest bidder who has not been delinquent or unfaithful in any former contract with the city; and that otherwise, in every case of contracts awarded by competitive bidding, the council must either award the contract to the lowest bidder or must reject all bids.

"We are of the opinion, however, that this is altogether too narrow and binding a construction to place upon these provisions of the Oakland city charter. There are many occasions in the experiences of municipal government when the quality of the thing to be supplied in the course of the public service depends upon conditions which differentiate bidders, and require the exercise of a sound discretion on the part of city officials in determining whether the wares or device which each individual bidder offers in the form of his own exclusive design are such as will meet the particular requirements of the intended work. In order to cover such cases it is quite usual in the provisions of city charters to find such terms as 'lowest and best bidder,' or as 'lowest responsible bidder,' and the like; and these phrases have been given by **[53 Cal.App.2d 616]** the courts a particular meaning, in which it must be presumed that they are used by the framers of city charters in the absence of other limiting clauses. The term 'lowest responsible bidder' has been held to mean the lowest bidder whose offer best responds in quality, fitness, and capacity to the particular requirements of the proposed work; and that where by the use of these terms the council has been invested with discretionary power as to which is the lowest responsible bidder, having regard to the quality and adaptability of the material or article to the particular requirements of its use, such discretion will not be interfered with by the courts in the absence of direct averments and proof of fraud. (2 Dillon on Municipal Corporations, 5th ed., sec. 811, p. 1223, and cases cited.) And even when in statutes and charters the term 'lowest bidder' only is employed, the courts have held that in determining whether a bid is the lowest among several others, there may be cases where the quality and ability of the thing offered--in other words, its adaptability to the purpose for which it is required--may be considered. (Clapton v. Taylor, 49 Mo. App. 117; Cleveland Fire-Alarm Co. v. Metropolitan Fire Commrs., 55 Barb. (N.Y.) 288.) In fact, it is conceded by counsel for the appellant that if, under a fair and liberal construction of this charter the city council had discretion, in awarding the contract to the lowest responsible bidder, to consider the quality of the respective devices upon which the several bids were predicated, such discretion honestly exercised will not be interfered with. We think it evident that the city charter of Oakland is to be given such a construction. ..."

[2] It seems to be true that as the city of San Diego invited bids for not less than 1,000 parking meters from each bidder and failed to specify that the award might be divided between two or more bidders, each receiving less than the total number, and since the awards were so divided between two rival bidders, the result was the same as though there had been no advertisement for bids.

The trial court found in effect: That it could not be found with any degree of mathematical certainty which bid of the three corporations was most favorable to the purchaser, or which bidder's guarantee clause was most favorable, that this is a matter as to which no exact comparison is possible, but one purely of individual opinion; that which corporation was the lowest responsible bidder "was and is a matter depending **[53 Cal.App.2d 617]** in part upon an exercise of discretion confided to the City Council ..."

"That it is not true that the construction and use of parking meters has been standardized to the degree that they are commodities which can be furnished by competitive bidding.

"That it is true that parking meters vary widely in kind, quality, appearance, and manner of operation; that it is true that the guarantee and service arrangements which parking meter companies are willing to enter into vary greatly in many respects wherein the purchaser's advantage is concerned; that it is true that it is impossible to designate in advance, definite specifications which do not operate to exclude equally responsible and reliable bidders whose meters do not, and cannot in the nature of things, conform to those specifications; that it is true that the best interests of the City of San Diego in obtaining the soundest and most economical meters, require that specifications be left so flexible, and the discretion of the Council of said City of San Diego so broad, that Section 94 of the Charter of said City does not and cannot have practical application, or any application at all."

The trial court's conclusion that the nature of parking meters was such that it was impossible to draw specifications to permit any competitive bidding, must of necessity be true, because each meter was covered by a patent, and specifications particularly and exactly describing one meter would necessarily exclude others. The trial court also concluded that there was a discretion in the city council to determine the type of meter, both in physical appearance and mechanical operation, best adapted to the needs of the city; that an attempt at competitive bidding would work an incongruity, would not affect the final result and would produce no advantage; that the city council exercised its discretion reasonably in selecting parking meters; that section 94 of the city charter did not apply to the purchase of such meters.

In Los Angeles Dredging Co. v. Long Beach, 210 Cal. 348 [291 P. 839, 71 A.L.R. 161], the Supreme Court said:

"The charter of the City of Long Beach lays down the general requirement that all contracts, except as otherwise provided in the charter or by general law, must be made by the city manager with the lowest responsible bidder. In the instant case, the contracts were made without the letting of bids. This fact renders them void unless they come within **[53 Cal.App.2d 618]** some exception to the rule set forth above. There are two well-recognized exceptions which are, we think, applicable to this situation.

"The first exception is founded on the fact that sometimes it is undesirable or impossible to advertise for bids for particular work. In such cases the statutory requirement is deemed not to apply. In 2 Dillon on Municipal Corporations, 1199, section 802, the law is thus stated: 'It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage ... or it is practically impossible to

obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.' Our courts have approved this doctrine. (Los Angeles Gas & E. Corp. v. Los Angeles, 188 Cal. 307 [205 P. 125]; Miller v. Boyle, 43 Cal.App. 39 [184 P. 421].)"

The foregoing rule should be applied here. The evidence fails to show that parking meters have been developed to the point where there is any reasonable basis of comparison between those which operate satisfactorily. If the specifications had been drawn strictly there could have been no competitive bidding because but one meter could have been described and there could have been but one bidder under them. Under such circumstances advertising for bids was unnecessary. (Contra Costa Water Co. v. Breed, 139 Cal. 432 [73 P. 189]) ; Los Angeles G. & E. Corp v. Los Angeles, 188 Cal. 307 [205 P. 125].) There being no chance of real competitive bidding, to require it would work an incongruity.

There is no showing of any fraud, connivance or unfairness in the transaction. There is no indication that the councilmen did not act in perfect good faith and that the interests of the city were not well served in the action taken. Further, it is probable that if all the meters installed under the contracts are not now paid for, they will be before the judgment in this case can become final.

[3, 4] It is perfectly clear that the execution of the contracts sought to be enjoined cannot be prohibited now. They were executed on July 10, 1941, and on August 26, 1941, respectively. An act already performed cannot be prevented by injunction. All of the meters have been installed. They are in plain view and we may take judicial notice of that fact. (Varcoe v. Lee, 180 Cal. 338 [181 P. 223].) Perhaps they have been, or soon will be, fully paid for out of revenue produced **[53 Cal.App.2d 619]** by them. When paid for title has or will be vested in the city. It would hardly seem reasonable to expect a court of equity to enjoin the performance of a contract that undoubtedly will be fully performed before the case can be retried, should the present judgment be reversed.

[5] Plaintiff urges error in the ruling sustaining a demurrer to his third cause of action. Five days were given in which to amend. No amendment was attempted.

That cause of action was an unsuccessful attempt, by innuendo and legal conclusion, to hint at fraud and undue influence in awarding the two contracts. No single ultimate fact was alleged upon which fraud or unfair dealings could have been predicated.

Had there been any fraud in the matter of awarding the contracts, proper allegations should have appeared in the pleadings. Plaintiff was given time in which to amend if he knew of any such facts that could have been alleged. He failed to amend. There was no error in the order sustaining the demurrer and no inference of improper action on the part of any councilman may be drawn under these circumstances.

The judgment is affirmed.

Barnard, P. J., and Griffin, J., concurred.

The Kendrick Group, LLC.

"Integrating Technology and Education"
http://educationrate.com

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the "Agreement") is dated as of May 18, 2011, by and between The Kendrick Group, LLC ("Consultant") and Bellflower Unified School District ("Client") (collectively the "Parties").

The Parties agree as follows:

1. **SERVICES:**

   Consultant will perform the consulting services described below (the "Services"): Manage the Client's E-Rate compliance including the preparation and filing of all USAC required forms. Act as the Client's agent in communication with USAC in the processing of funding applications. File any SLD appeals and work with the Client on FCC appeals if any are required. Provide the Client with use of the Educationrate.com Client Services which includes but is not limited to the E-Binder which is an electronic copy of USAC's E-Rate Binder and the Form 471 data.

2. **TIME OF COMPLETION:**

   The Services are ongoing, and shall be performed as requested by Client for the duration of the term of this Agreement and based on the schedule set by the Schools and Libraries Program of the Universal Service Fund.

3. **WORKPLACE:**

   When performing the Services, the work product generated by the Consultant will be considered performed in the State of Alabama. Delivery of work product to the Client does not constitute a nexus to work being performed in the State of California. Consultant will not be on Client's property.

4. **PAYMENT:**

   Client shall pay Consultant for the material and labor to be performed under this Agreement the sum of [redacted]

   The payment(s) shall be paid in the following manner:

   Client will pay eight payments of [redacted] for a total of [redacted], upon being invoiced by Consultant. Payments shall be paid within 30 days of invoice date.

5. **TERM:**

   The term of this Agreement shall begin on July 1, 2011, and shall expire on June 30, 2012.